

# **TOWN OF WESTFORD**

## **ZONING BOARD OF APPEALS**

### **MINUTES**

**DATE:** April 23, 2003

**TIME:** 7:30 P.M.

**PLACE:** Westford Academy

**PRESENT:** Sam Frank, Ron Johnson, Dave Earl, Jay Enis, Bob Herrmann,  
Roger Hall, Jim Kazeniac

#### **OTHERS**

**PRESENT:** Tim Greenhill-Town Planner, Ellen Doucette-Town Counsel,  
Norman Khumalo-Asst. Town Manager, Audience Members

#### **CONCORD PLACE LLC, 137 CONCORD ROAD**

*That of Concord Place LLC, petitioners for property located at 137 Concord Road, Assessor's Map 11, Parcel 10, for a Comprehensive Permit under Massachusetts General Laws Chapter 40B, to construct 16 units on a .94 acre site, the applicant is requesting waivers from S. 3.1 Principle Uses, S. 4.1 General Regulations, Table of Dimensional and Density Regulations, Table of Principle Uses Regulations, S. 4.1 One Structure Per Lot, S. 6.3 Growth Management, S. 9.4 Site Plan Review of the Westford Zoning Bylaw; and waivers from the Westford Board of Health Regulations S. 6.2 Requirement that the System be Designed with a Capacity of 150 Gallons per Day, S. 6.3 Requirement for Separate Reserve Area or Build Reserve Area at Same Time as Primary, S. 6.5 Requirement for Minimum 50 FT. Distance Between Soil Absorption and Subsurface Infiltration System, S. 6.12 Requirement for Hydrological Study, S. 6.13C Requirement for Topographical and Subsurface Features or Structures Existing or Proposed within 150 FT. of Disposal System, and S. 6.13K Requirement for Mounding Calculations; and a waiver from the Westford Demolition Bylaw; the Building Permit Inspection, Application, Connection Fees and any other Town of Westford fees that may be applicable to the proposed Concord Road project*

Frank announced that this was the first hearing on the Concord Road project. Frank outlined the review process. Ken Morgan, 4 Dutchman Lane, asked what the Board's discretion was in granting the requested waivers. Frank stated that it is within the Board's discretion to grant any or none of the waivers and that the Board does ask for

justification of the requested waivers. Doucette added that unless there is some overwhelming public health or safety issue that arises that the request impacts on that overrides the need for the variance regardless of economics, public health and safety requires denial.

It was moved by Johnson, seconded by Kazeniac, and VOTED UNANIMOUSLY, to open the public hearing on Concord Place.

Frank stated that the Board had approximately 100 pages of the applicant's initial proposal which also includes the application that went to the State with the pro forma. Frank read the Table of Contents from the application. Copies of the application are available at Town Hall. Frank reported that there were no letters to read into the record at this time.

Dennis Page, Concord Place LLC, was present for Attorney Douglas Deschenes. Page stated that it was his understanding from Attorney Deschenes that there would only be discussion to establish a peer review account and assign peer review consultants. Page was not prepared to make a full presentation at this meeting.

Khumalo suggested that the neighbors name a contact person for the neighborhood notification. Patricia Wagner-Montminy, 135 Concord Road, volunteered to be the neighborhood contact person.

***APPLICATION REVIEW*** – Greenhill asked for a landscaping plan, rear and side elevations, any additional information on traffic patterns, grading and utilities plan, and a details plan showing lighting, drainage features, detention basins, etc. Frank asked that some of the plans be provided to the Board in reduced sizes. Frank also asked for a site plan set, a supplemental data report, and any further details on the cost estimates of the design features.

Ken Morgan, 4 Dutchman Lane, stated that neighbors are concerned with impacts to their wells. Morgan asked if the results of the reviews by the various town boards would be available to the neighbors. Greenhill stated that a breakdown of discussions and reviews will be available at Town Hall.

Johnson stated that all documentation that comes to the Board is public information and will be made available to the public either at the Board meetings or at the Westford Town Hall.

Earl asked what plans the developer had for a common area within the project. Earl felt that the common area was something that the developer needs to address.

Frank stated that his general reaction to the design is that it is very busy for less than one acre and that obviously will be the most well discussed issue. Frank stated that he did not want to see the development looking like an apartment or barracks but that it blend in with the Westford look as much as possible. Page indicated that they were willing to work with the Board on the design as long as it is economically feasible.

#### ***AUDIENCE COMMENTS***

Chris Romeo, 239 Concord Road, asked for clarification regarding the acreage, the number of bedrooms proposed, number of units, and number of buildings. Page stated that the developer is proposing sixteen (16) two-bedroom town-house style units on a .96 acre lot. Romeo asked if there was a marketing strategy regarding the non-affordable units, i.e., appeal to families, appeal to seniors, etc. David Trahan, developer, stated that the development appeals to starter homes, people who are downsizing, and families in the middle. Trahan stated that it is very broad based appeal and difficult to pinpoint exactly. Trahan did not have a marketing strategy to go after a particular group. Romeo asked if there was an anticipated price range on the two-bedroom units. Frank stated that since the applicant has not made a formal application he did not want too many detail questions. Frank read a table which stated that there are sixteen (16) units, four (4) affordable, two bedrooms, bath and a half, 1,400 sq. ft., two (2) buildings each with eight (8) units. Frank stated that the pro forma listed the affordable units at \$142,000 and the market rates were listed at \$220,000.

Warren Hayes, Merrimack New Hampshire, was present with his father-in-law who had hearing difficulties. Hayes asked if the historical aspect of the Fred Alcorn building could be investigated. Frank stated that the Historic Commission will be addressing those issues. Frank noted that one of the variances being requested is to bypass the Demolition Bylaw. Frank stated that the Board will not bypass the Demolition Bylaw as a matter of general principle and that the process will be opened up for the Historic Commission for their input.

A resident stated that in addition to the two bedrooms there is a loft. The resident asked what the loft would be used for if not a third bedroom. Page stated that the loft is an accessory to the bedroom typically used as an office. Page did not expect the loft to be used as a bedroom.

Kevin Cloutier, 11 April Lane, asked if there was going to be a study on the impact to the school system. Frank stated that it is worth knowing what the "kid loading" will be and the likely age distribution of the owners and their families.

Roberta McGuire, 60 Chamberlain Road, member of the Historic Commission, stated that the Commission has the intention of reviewing this from a historical perspective.

Cole Howard, 22 Phillips Drive, asked what waivers the applicant asked for and what waivers the Board will be granting. Frank reiterated the list of waivers requested by the applicant. Frank stated that the Board cannot tell what waivers will be granted until the review process begins. Frank stated that the Board will hold the development to the zoning and Board of Health regulations.

Dennis Galvin, 90 Concord Road, agreed with Frank's statement regarding the zoning and Board of Health regulations. Galvin stated that affordable housing is a high priority in Westford but that the issue here is not affordable housing. Galvin stated that the issue is reasonableness and that is one of the principal things that the residents will be concerned about. Galvin felt that Chapter 40B allows a developer to make a profit under the guise of affordable housing. Galvin also felt that the members of the Zoning Board of Appeals were the only ones that represent the neighbors' interests in this particular situation. Galvin stated that the neighbors are hoping for justice from the Zoning Board of Appeals.

Warren Hayes, Merrimack, New Hampshire, asked if a traffic study would be completed. Khumalo stated that as part of the application the Town will ask the applicant to provide baseline information on traffic patterns in the area. That information will be forwarded to the Town Engineer who will then advise the Town as to whether there is a need for further studies.

Jack Turpin, 9 April Lane, asked who pays for the initial traffic study. Khumalo stated that the applicant pays for the initial study. Turpin was concerned that the traffic study would be in the applicant's favor. Frank stated that the Town hires its own engineers and also deals with professionals on both sides. Johnson stated that the applicant puts up an escrow fund which is used by the Town to hire consultants.

Alan Hicks, 130 Concord Road, pointed out that there is a discrepancy in the size of the site on the Mass Housing application. Hicks asked if the applicant would have to re-file with Mass Housing. Trahan stated that there is a discrepancy in the Assessor's Office data and the survey data. The site plan submitted to the State is the same plan submitted with the package. There is no intent to resubmit the application to the State. Herrmann asked how the applicant could know if the State would have given approval on a .94 acre site. Trahan reiterated that the site plan says .94 acre. Herrmann pointed out that the application went in with 1.15 acres. Hicks stated that the letter of approval from the State also indicates a 1.15 acre lot. Frank suggested that Town Counsel speak to the applicant's attorney regarding the discrepancy since the State did not pick up the discrepancy. Doucette stated that the letter says that they did an onsite inspection and that they reviewed everything. Doucette stated that she would speak to Attorney Deschenes. Doucette stated that the State looks at the numbers, what was paid for the site, what the costs will be, etc., and then they make some estimates.

Marjorie Hicks, 130 Concord Road, stated that the Mass Housing application asks if the site or building located on a site is nominated or eligible for a listing on the National Register of Historic Places. Hicks stated that there is no indication on the application that the house is over 180 years and may indeed be eligible for the National Register of Historic Places. Hicks felt that there should have been a question mark if the applicant did not know rather than saying no in the application. Hicks believed that Mass Housing is concerned with taking down historic buildings and had they known it was a historic structure (former tavern) they may not have given approval. Trahan stated that he tried to get a status of the building from the Historic Commission three times and was never responded to. Frank stated that staff would research the historic aspect. Greenhill asked that the audience provide comments to the Board in writing prior to the meetings. Johnson suggested continuing the public hearing until more information is received.

An abutter asked the Board to close the public hearing and deny the application. The abutter felt that it was very troubling that this hearing has been scheduled, there are over 70 people present expecting to get information and then find out that the developer is not ready to make a presentation nor is his attorney here. The audience heard from Attorney Doucette that Attorney Deschenes is on vacation. The abutter felt that it was not fair to each and every person in this room to have a hearing and not go forward with the hearing. The abutter felt that the fair thing for the Board to do was deny the application. Frank stated that the Board would have to deal with the application one way or another. Frank apologized to the audience and stated that it was his understanding that an attorney would be present this evening. Frank stated that he would entertain a motion to deny. There was no motion. Earl asked what the

significance was of opening the application this evening if the applicant is not prepared to present. Doucette stated that the Board had to open the public hearing this evening or risk a constructive grant.

**ESCROW ACCOUNT** - Page offered \$8,000 (\$500 per unit) to be placed in an initial escrow account and to be replenished at some drawdown point. It was moved by Johnson, seconded by Earl, and VOTED 5 IN FAVOR WITH 2 NOT VOTING (Alternates Kazeniac and Herrmann), to accept \$8,000 as an initial contribution from the applicant in escrow under the Town's control for funding of the peer reviews. A resident from Concord Road asked that before the Board entertains any escrow account the applicant should go back to the State for the correct information and see if the State will approve it because it was approved with incorrect information. Frank stated that the matter has been referred to the two attorneys for resolution and if it appears that it is appropriate to go back to the State the Board will send it back.

Page asked if the Board would be assigning a consultant. Khumalo stated that until the Board receives a complete application a consulting firm will not be assigned for peer review.

Steve Faber, 21 Howard Road, asked what the implications were of having incorrect information in the application and how does the Town know that there are not more incorrect pieces of information in the application. Frank outlined the review process. Doucette stated that there is a discrepancy in the acreage and that the Board does not know yet if Mass Housing is aware of that and they found it to not mean anything. Doucette stated that she would be looking into that matter with Mass Housing. Doucette also stated that any other discrepancies will come out during the public hearing process. Herrmann stated that there are two issues with the application: the acreage and the historic component. Ken Tebbetts, Historic Commission, stated that the building has local significance but that does not necessarily mean that it would be eligible for the National Register of Historic Places.

Ken Morgan, 4 Dutchman Lane, asked if the Town was risking any other unilateral decisions by extending the hearing. Doucette stated that the Board can keep the hearing open as long as they are receiving new information. Once the hearing is closed the Board has 45 days to make a decision.

A resident stated that there is a map on file with the Planning Board that was done for Mr. Page that is dated September 27, 2002 showing .94 acres. On the application to Mass Housing which says 1.15 acres that is dated October 25, 2002. In the letter written to Mass Housing on September 19<sup>th</sup> Mr. Page declared that the project was 1.15 acres.

**MOTION TO CONTINUE** - It was moved by Johnson, seconded by Earl, and VOTED 5 IN FAVOR WITH 2 NOT VOTING (Alternates Kazeniac and Herrmann) to continue the public hearing to May 28, 2003 at 7:30 p.m. Greenhill to try to get a larger room for the next meeting.

**ROSEGATE DEVELOPMENT LLC – 40B PROJECT**  
***12 Unit Development, Assessor's Map 27, Parcel 53, 99 Main Street***

**DRAINAGE** - Chris Lorrain, LANDTECH Consultants, stated that a written response to the Howe Surveying comments has not yet been prepared. The applicant has been

reviewing those comments and is in the process of addressing the issues. A written response will be submitted to the Board in the near future.

**TRAFFIC** - Lorrain stated that the applicant has responded in a letter dated April 22, 2003 relative to the traffic comments. Lorrain stated that the Town Engineer's report indicated that the traffic report sufficiently does a comparison of the trip generation of the existing 10,000 sq. ft. commercial building versus the 12 proposed residential units. Lorrain stated that the Town Engineer asked for additional information on the traffic report to assess stopping site distance. Lorrain stated that the measured site distance from the proposed access way is in excess of 350 feet in either direction. That site distance corresponds to a safe stopping site distance to a speed of 50 mph on Main Street (which is in excess of the speed limit). Lorrain stated that they did not feel there was any need for a detailed analysis. Lorrain stated that the Fire Prevention Officer indicated at a department head meeting that he had no issues with access for emergency vehicles and equipment.

**ARCHITECTURAL & DESIGN** – Robert Walker, developer, stated that they looked at several alternatives at the beginning of the process. Walker felt that the 12 unit proposal presented to the Board is the best project for the site.

Khumalo stated that the goal of this meeting was to verify if the developer had enough time to review the comments from the Town's peer review consultant specifically the engineering issues. Khumalo stated that the Board is not expecting to discuss the architectural review or the traffic issues. Khumalo stated that the applicant's comments to the Town Engineer must be forwarded to the Engineering Department for their comments. Khumalo informed the applicant that the Town expects a written response when the architecture is discussed at a future meeting. Earl asked that the applicant respond specifically to the four recommendations of the architect who reviewed it. Khumalo suggested that any questions or comments from the Board should be referred to him and he will forward them to the appropriate party. Tony Ma, Howe Surveying, outlined the review process. Lorrain outlined the waivers requested by the applicant. Frank asked the applicant to prepare a hydrogeological analysis. Frank and Walker discussed the preparation of an analysis. Khumalo suggested that the Board allow time for the working sessions to take place because it is at those discussions that the Town will hear arguments for the requested waivers and from the Town's consultant. Earl recalled that there was much discussion at the last meeting regarding the water issues at this site and that the Board was asking for more information. Earl felt it was inconceivable that the applicant would ask for an additional waiver and question why the Board would ask for an analysis. Herrmann wanted as much information as possible regarding the water on the site before voting on the waiver. Johnson stated that the Board needed to be able to define what was needed for a hydrogeological study which could be accomplished at the working session. Earl was concerned that the input from the neighbors might get filtered out at the working sessions. Frank stated that the consensus of the Board is to have a working session and try to scope out the additional studies that the engineers think are appropriate. Frank stated that the Board can then react to the result of those studies. Khumalo stated that staff takes this issue seriously and will be inviting staff from the Health Department, Conservation and Town Engineer to participate in the discussions. Frank stated that he would provide minutes of the working sessions for the Board members. Khumalo stated that the goal of the working sessions is to allow in-depth and deliberate discussions of the details behind the studies. No binding decisions as far as the Board's authority is concerned will be made at the working sessions.

**PERK TESTING** – Johnson referenced a letter from Attorney Deschenes which indicated that the applicant would not be requesting a waiver from Westford Board of Health regulations regarding perk testing. Johnson asked for a clarification of the statement. Lorrain stated that testing has been done within the area of the septic system and leaching field in season and has passed. Lorrain stated that the testing showed that the soil is adequate under Title 5. Lorrain outlined the deep hole and perk test process and season under Westford Board of Health requirements and Title 5 regulations. Khumalo asked the applicant what his plans were if the system fails 15-20 years from now. Lorrain stated that in accordance with the state and local regulations the system has to be designed such that there is a primary and reserve leaching field. The reserve leaching field is left for the system if it fails.

**WORKING SESSION** – To be held at Town Hall at a time to be determined.

Walker asked if there were any more peer review consultants that they could employ. Walker also asked if they could be heard first at the next meeting. Frank to take the scheduling of the meeting under advisement. Khumalo stated that more information is needed before deciding whether more peer review consultants will be used. Khumalo stated that the original schedule will be revised due to the need for additional discussions on the engineering information. Khumalo reported that he is still working on getting numbers regarding children. Earl asked that staff call the Westford School Department and ask them for some numbers regarding other Chapter 40B projects.

### **AUDIENCE COMMENTS**

Dennis Keris, 100 Main Street, stated that at the meeting of March 26<sup>th</sup> a number of things were presented by Attorney Deschenes and the LANDTECH representative. The site was going to be staked so the Board would have an opportunity to walk the site. Keris asked if the Board walked the site. Keris stated that at the first meeting of the Conservation Commission they walked the site. Keris believed that the Conservation Commission was supposed to send a report regarding the wetlands and other water issues to the Zoning Board of Appeals for discussion this evening. Keris asked for clarification regarding the waivers. Frank stated that at the first meeting the applicant was asked to justify some of the waivers and in a response the Board received additional justification and additional waiver requests. Khumalo reported that a formal letter of comment has not been received from the Conservation Commission. Keris felt that the concerns and comments from the Conservation Commission are very important. Staff to obtain a copy of the letter for the Board's review as soon as possible. Lorrain will stake the footprint of the building in coordination with the Board's site visit.

Frank Sherman, 104 Main Street, asked who was responsible for sending out the letters from the Conservation Commission regarding notification. Lorrain stated that his office sends out notification letters pursuant to the certified abutters list from the Assessor's Office. Sherman stated that he and his neighbor did not receive a letter. Lorrain suggested that Sherman and his neighbor check with Bill Turner of the Conservation Commission because they now have the certified mailing slips.

Dennis Keris, 100 Main Street, asked for clarification regarding the relief from groundwater and mounding. Lorrain did not recall mentioning a relief from groundwater. Lorrain stated that the original waiver request for the testing and

performance with the Board of Health regulations would have related to recording the groundwater during the wettest season of the year in accordance with their regulations. Lorrain clarified that groundwater mounding is a calculation that is done under very large septic systems to generally determine what the impact is of the septic system on the height of the groundwater underneath it from the effluent of the septic system moving through the soil and interacting with the groundwater. Lorrain stated that generally under a heavy loading period when the effluent travels down through the ground and picks the groundwater there will be a temporary mound under the leach field where the groundwater will come up slightly. Lorrain stated that the applicant requested a waiver from the Board of Health's requirement regarding ground-water mounding. Keris stated that the Conservation Commission had an issue regarding how much water the land could handle during a heavy period. Keris was also concerned with the handling capacity of the land regarding water during heavy periods. Frank asked Lorrain what kind of mounding he expected above the ground level that is already there because the part of where the septic system is one of the higher parts of the property. Lorrain addressed the grading of the site and Main Street and the testing of the site.

A resident asked if the applicant looked into the issue of gas tanks on the site. Walker stated that they are all set as far as the environmental issues that pertain to the site.

***SITE VISIT*** – Scheduled for Saturday, May 3, 2003 at 9:00 a.m.

**MOTION TO CONTINUE THE PUBLIC HEARING**

It was moved by Johnson, seconded by Earl, and VOTED 5 IN FAVOR WITH 2 NOT VOTING (Alternates Kazeniak and Herrmann) to continue the public hearing to May 28, 2003.

**ADJOURNMENT**

It was moved by Johnson, seconded by Earl, and VOTED UNANIMOUSLY, to adjourn the meeting.

Submitted by Beth Kinney, Recording Secretary